

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

IN THE MATTER OF DETERMINING A )  
FUTILE CALL FOR THE DELIVERY OF ) ORDER  
SURFACE WATER IN WATER DISTRICT 34, )  
BIG LOST RIVER )

The Director of the Department of Water Resources (Department), being charged with the duty of protecting vested water rights, enforcing certain statutes of the state of Idaho and the rules of the department, has consulted with the watermaster of Water District 34 regarding the determination of a futile call and delivery of surface water on the Big Lost River.

Based on the department's investigation and understanding of the law, the Director finds and orders as follows:

**FINDINGS**

1. Rule 20.04 (IDAPA 37.03.12.20.04) of the Rules Governing Water Distribution in Water District 34 (Distribution Rules), provides:

**Rule 37.03.12.025.04. Futile Call for the Delivery of Surface Water**

When curtailment of junior upstream surface water rights will not make water available for delivery and use to senior downstream surface water rights, without unreasonable waste as determined by the Director, the watermaster will not curtail the junior water rights in a futile effort to deliver water to the senior rights. The Director may consult the Water District 34 advisory board, the Big Lost River Irrigation District and other impacted water users when determining whether attempting to deliver senior downstream surface water rights would be futile.

2. The watermaster of Water District 34 has contacted the Director of the Department and provided measurements of the flow and diversions in the various reaches of the Big Lost River for those reaches defined in the Distribution Rules.
3. The watermaster reported on July 24, 2001 that of approximately 140 cfs measured near Leslie, only 9 cfs of water reached the Moore diversion near Moore. This constitutes more than a 90 percent loss of water in the Leslie to Moore Reach. Measurements made by the watermaster on July 26 indicate similar losses. The watermaster further reported that he made an investigation of the river channel between Moore and Leslie between July 23 and July 26 to determine potential causes for the losses. The watermaster could not determine that the losses were caused by reasons other than natural channel seepage loss and

evaporation resulting from drought conditions. The watermaster could not determine that the losses were due to any wasteful management or wasteful use of the water.

4. On July 26, 2001, department staff spoke with both the water district watermaster and the manger of the Big Lost Irrigation District. The watermaster reported that he had contacted seven of the eleven water district advisory committee members as of July 26. All seven of the committee members and the watermaster supported making a futile call determination from Leslie to Moore. The manager of the Big Lost Irrigation District reported that he had contacted three of the five district board directors. All three directors contacted plus the district manager supported a futile call determination. The manager did advise however that one of the two directors who was not contacted would not likely support a futile call determination.
5. Based on the information supplied by the water district watermaster and the Big Lost River Irrigation District manager, the Director should authorize a futile call determination for the delivery of surface water in the Big Lost River between Leslie and Moore.

**BASED UPON THE FOREGOING FINDINGS IT IS, THEREFORE, HEREBY ORDERED AS FOLLOWS:**

1. Effective upon entry of this order, the curtailment of junior surface water rights upstream of the Moore diversion for delivery and use of senior rights at the Moore diversion and/or other diversions downstream of the Moore diversion constitutes a futile call upon the junior rights.
2. The Water District 34 watermaster is hereby authorized to discontinue the delivery of surface water downstream to the Moore diversion to satisfy delivery of senior surface water rights.
3. The watermaster, with approval of the director, may discontinue the futile call determination during the remaining irrigation season if circumstances change such that delivery is no longer futile.

Dated this 27<sup>th</sup> day of July, 2001

  
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KARL J. DREHER  
DIRECTOR